

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MICHAEL SMITH,

Plaintiff(s),

-against-

**THE CITY OF NEW YORK and NEW YORK CITY
POLICE OFFICER JOEL EDOUARDO (SHIELD #
24576),**

Defendant(s).

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To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York
April 1, 2015

David A. Karlin
Yours, etc.,

David A. Karlin, Esq.
BELOVIN & FRANZBLAU, LLP
Attorneys for Plaintiff(s)
Office & P. O. Address
2311 White Plains Road
Bronx, New York 10467-8106
(718) 655-2900

Defendants' Address:

THE CITY OF NEW YORK

100 Church Street

New York, New York 10007

NEW YORK CITY POLICE OFFICER JOEL EDOUARDO

81st Precinct

30 Ralph Avenue

Brooklyn, NY 11211

Index No:

Plaintiff designates
Bronx County
the place of trial

The basis of venue is
the location of incident

SUMMONS

Plaintiff resides at:
1565 Townsend Ave., B
Bronx, New York 10452

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MICHAEL SMITH,

Plaintiff,

VERIFIED COMPLAINT

-against-

Index No:

THE CITY OF NEW YORK and NEW YORK CITY
POLICE OFFICER JOEL EDOUARDO (Shield #
24576),

Defendants.

-----X

Plaintiff, by and through his attorneys, BELOVIN & FRANZBLAU, LLP, as and for a verified complaint, respectfully allege as follows:

1. At all times hereinafter mentioned, plaintiff was and still is a resident of the City and State of New York, County of Bronx.

2. At all times herein, the defendant, THE CITY OF NEW YORK, was, and still is a duly licensed Municipal Corporation authorized to transact business in the City of New York, County of Bronx.

3. At all times herein, the defendant, JOEL EDOUARDO, was employed by the defendant, THE CITY OF NEW YORK, as a police officer.

4. At all times herein, the defendant, JOEL EDOUARDO, was employed by the defendant, THE CITY OF NEW YORK as member of its police department.

5. Upon information and belief, the defendant, THE CITY OF NEW YORK, employed JOEL EDOUARDO (Shield # 24576), who was herein a duly employed and acting New York City Police Officer (or other

ranking officer) of the City of New York, County of Kings, State of New York.

6. Upon information and belief, the defendant, **NEW YORK CITY POLICE OFFICER JOEL EDOUARDO (Shield # 24576)**, was and still is, at all times herein mentioned, a resident of State of New York.

7. Upon information and belief, all times herein, the defendant, **THE CITY OF NEW YORK**, employed **P.O. JOEL EDOUARDO (Shield # 24576)** and other officers who at all times herein acted within the furtherance and scope of their employment with **THE CITY OF NEW YORK**.

8. The defendant, **THE CITY OF NEW YORK**, is liable and responsible for all of those acts committed by all such officers including but not limited to the defendant, **NEW YORK CITY POLICE OFFICER JOEL EDOUARDO (Shield # 24576)**, pursuant to the doctrine of respondeat superior.

9. The defendant, **THE CITY OF NEW YORK**, expressly and/or implicitly condoned all of the actions of all such officers including but not limited to the defendant, **NEW YORK CITY POLICE OFFICER JOEL EDOUARDO (Shield # 24576)**, as set forth herein and hereinafter.

10. Upon information and belief, each and all of the acts of the defendants alleged herein were done by defendants, both as individuals, and under the color and pretense of the statutes, ordinances,

regulations, customs and usages of the State of New York, City of New York and the County of New York, and under the authority of their office and as Police Officers for New York City.

11. Prior to the commencement of this action, on about the 10th day of July, 2014 a Notice of Claim was duly served herein on the defendant. Thereafter, on the 24th day of February, 2015, the City of New York conducted a 50-H hearing pursuant to the General Municipal Law. More than thirty days have expired since the filing of the Notices of Claim and the defendant has failed and neglected to adjust the claim. This action is timely brought.

AS AND FOR A FIRST CAUSE OF ACTION

12. Plaintiff repeats, reiterates and realleges each and every allegation numbered "1" through "11", above as if fully set forth herein.

13. On or about April 16, 2014 at approximately 8:50 p.m. in the vicinity of 12 Albany Avenue, in the City and State of New York, County of Kings, the defendant, **THE CITY OF NEW YORK**, by and through its detectives/police officers and/or other agents, servants and/or employees including but not limited to defendant, **P.O. JOEL EDUARDO**, did commit **battery** upon the plaintiff when they wrongfully touched, grabbed, shoved, struck and kicked the plaintiff, causing him severe physical pain, psychological pain and mental suffering. At no time did the defendants have legal cause or justification to touch, grab,

shove, strike or kick the plaintiff, nor did the plaintiff consent to such illegal acts nor were such acts privileged by law.

14. On or about April 16, 2014 at approximately 10:00 p.m. at the 81st police precinct, in the City and State of New York, County of Kings, the defendant, **THE CITY OF NEW YORK**, by and through its detectives/police officers and/or other agents, servants and/or employees, including but not limited to, **P.O. JOEL EDUARDO**, did commit **battery** upon the plaintiff when they wrongfully touched, grabbed, shoved, struck and pushed his face and nose against the desk at the police precinct in an excessive manner, causing him severe physical pain, psychological pain and mental suffering. At no time did the defendant have legal cause or justification to touch, grab, shove, strike or seize plaintiff or to push the plaintiff's face and nose against the desk, nor did the plaintiff consent to such illegal acts nor were such acts privileged by law.

15. On or about April 16, 2014 at approximately 8:50 p.m. in the vicinity of 12 Albany Avenue, in the City and State of New York, County of Kings, the defendant, **P.O. JOEL EDUARDO**, did commit **battery** upon the plaintiff when he wrongfully touched, grabbed, shoved, struck and kicked the plaintiff, causing him severe physical pain, psychological pain and mental suffering. At no time did he have legal cause or justification to touch, grab, shove, strike or kick the plaintiff, nor did the plaintiff consent to such illegal acts nor were such acts

privileged by law.

16. On or about April 16, 2014 at approximately 10:00 p.m. at the 81st police precinct, in the City and State of New York, County of Kings, the defendant, **P.O. JOEL EDUARDO**, did commit **battery** upon the plaintiff when he wrongfully touched, grabbed, shoved, struck and pushed his face and nose against the desk at the police precinct in an excessive manner, causing him severe physical pain, psychological pain and mental suffering. At no time did the defendant have legal cause or justification to touch, grab, shove, strike or seize plaintiff or to push the plaintiff's face and nose against the desk, nor did the plaintiff consent to such illegal acts nor were such acts privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

17. Plaintiff repeats, reiterates and realleges each and every allegation numbered "1" through "16", above as if fully set forth herein.

18. On or about April 16, 2014 at approximately 8:50 p.m. in the vicinity of 12 Albany Avenue, in the City and State of New York, County of Kings, the defendant, **THE CITY OF NEW YORK**, by and through its detectives/police officers and/or other agents, servants and/or employees including but not limited to defendant, **P.O. JOEL EDUARDO**, did commit **assault** upon the plaintiff when they wrongfully threatened to and showed the means and willingness to touch, grab, shove, strike

and kick the plaintiff, causing him severe physical pain, psychological pain and mental suffering. At no time did the defendants have legal cause or justification to threaten or show the means and willingness to touch, grab, shove, strike or kick the plaintiff, nor did the plaintiff consent to such illegal acts nor were such acts privileged by law. Moreover, plaintiff was in fear of imminent harm based upon the defendant's actions.

19. On or about April 16, 2014 at approximately 10:00 p.m. at the 81st police precinct, in the City and State of New York, County of Kings, the defendant, **THE CITY OF NEW YORK**, by and through its detectives/police officers and/or other agents, servants and/or employees, including but not limited to, **P.O. JOEL EDUARDO**, did commit assault upon the plaintiff when they wrongfully threatened to and showed the means and willingness to touch, grab, shove, strike and push his face and nose against the desk at the police precinct in an excessive manner, causing him severe physical pain, psychological pain and mental suffering. At no time did the defendant have legal cause or justification to threaten or show the means and willingness to touch, grab, shove, strike or seize plaintiff or to push the plaintiff's face and nose against the desk, nor did the plaintiff consent to such illegal acts nor were such acts privileged by law.

20. On or about April 16, 2014 at approximately 8:50 p.m. in the vicinity of 12 Albany Avenue, in the City and State of New York, County

of Kings, the defendant, **P.O. JOEL EDUARDO**, did commit **assault** upon the plaintiff when he wrongfully threatened to and showed the means and willingness to touch, grab, shove, strike and kick the plaintiff, causing plaintiff severe physical pain, psychological pain and mental suffering. At no time did the defendant have legal cause or justification to threaten or show the means and willingness to touch, grab, shove, strike or kick the plaintiff, nor did the plaintiff consent to such illegal acts nor were such acts privileged by law. Moreover, plaintiff was in fear of imminent harm based upon the defendant's actions.

21. On or about April 16, 2014 at approximately 10:00 p.m. at the 81st police precinct, in the City and State of New York, County of Kings, the defendant, **P.O. JOEL EDUARDO**, did commit **assault** upon the plaintiff when he wrongfully threatened to and showed the means and willingness to touch, grab, shove, strike and push his face and nose against the desk at the police precinct in an excessive manner, causing plaintiff severe physical pain, psychological pain and mental suffering. At no time did the defendant have legal cause or justification threatened or show the means and willingness to and touch, grab, shove, strike or seize plaintiff or to push the plaintiff's face and nose against the desk, nor did the plaintiff consent to such illegal acts nor were such acts privileged by law.

AS AND FOR A THIRD CAUSE OF ACTION

22. Plaintiff repeats, reiterates and reallges all of the allegations contained in paragraphs "1" through "21" with full force and effect as though set forth at length herein.

23. Defendant, **P.O. JOEL EDOUARDO**, at all times relevant, was employed as a police officer and/or other agent, servant and/or employee, and was at all times, acting in his capacity as an officer of the New York City Police Department.

24. At all times mentioned herein, said **P.O. JOEL EDOUARDO** was acting under color of law, to wit: the statues, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

25. Plaintiff, **MICHAEL SMITH**, is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

26. On or about April 16, 2014 the defendant, **P.O. JOEL EDOUARD**, after effectuating the seizure of the plaintiff, **MICHAEL SMITH**, committed civil rights violations more fully set forth herein and did identify, target, profile, assault, commit a battery upon, strike, shove, push, kick and/or injure the plaintiff, and/or did push plaintiff's face and nose against a desk at the 81st police precinct without legal cause or legal justification. Such actions by the

defendant were clearly unjustified, unnecessary and excessive.

27. The above actions by the defendant, **P.O. JOEL EDOUARDO**, resulted in the plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from the use of excessive force during the arrest process.

28. The defendant subjected the plaintiff to such deprivations, either in a malicious or reckless disregard of the plaintiff's rights and/or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

29. The direct and proximate result of the defendant's acts are that the plaintiff has suffered severe and permanent injuries of a physical and psychological nature. He was forced to endure loss of freedom, pain, suffering, limitations and humiliation, all to his detriment. The plaintiff did not consent to any of the defendant's actions set forth in this cause of action nor did defendant have legal cause to act in such a manner.

30. The defendant, **P.O. JOEL EDOUARDO**, herein was fully aware that there was no legitimate, proper or legal reason to identify, target, profile, assault, commit a battery upon, strike, shove,

push, kick or injure the plaintiff, or to push plaintiff's face against a desk at the 81st police precinct, all with plaintiff's knowledge and without plaintiff's consent.

31. The foregoing acts, omissions and systemic failures are customs and policies of THE CITY OF NEW YORK, which caused the detectives/police officers and or other employees to falsely identify, violate plaintiff's constitutional rights as set forth herein, under the belief that they would suffer no disciplinary actions for their actions.

WHEREFORE, plaintiff demands judgment in each cause of action against each defendant, jointly and severally, in an amount which exceeds the jurisdictional limits of all lower Courts, together with costs, interest and disbursements of this action, together with attorney's fees, together with such other and further relief as this Court deems just and proper.

Dated: Bronx, New York

DAK
Yours, etc.,

David A. Karlin, Esq.
BELOVIN & FRANZBLAU, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address
2311 White Plains Road
Bronx, New York 10467-8106
(718) 655-2900

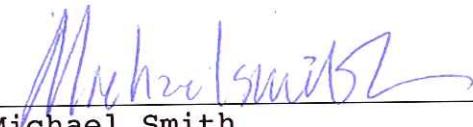
VERIFICATION

State of New York)

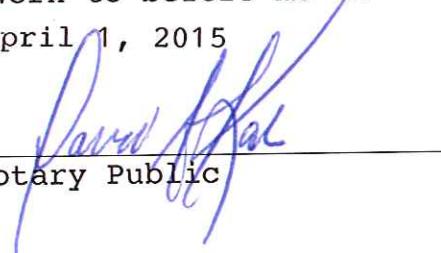
ss:

County of Bronx)

Michael Smith, being duly sworn, deposes and says: That (s)he is the plaintiff in these proceedings; that (s)he has read and knows the contents of the above VERIFIED COMPLAINT and that the same is true to her/his own knowledge except as to the matters therein stated to be alleged upon information and belief, as to those matters, (s)he believes them to be true.


Michael Smith

Sworn to before me on
April 1, 2015


Notary Public

DAVID A. KARLIN
Notary Public, State of New York
No. 02KA6050239
Qualified in Westchester County
Commission Expires 10/30/2018